United Nations CEDAW/C/70/D/76/2014

Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 76/2014*,**

Communication submitted by:	H.D. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	30 October 2014 (initial submission)
References:	Transmitted to the State party on 5 November 2014
Date of adoption of decision:	9 July 2018

* Adopted by the Committee at its seventieth session (2–20 July 2018).

** The following members of the Committee participated in the examination of the present communication: Ayşe Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshcila, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

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1.1 The author is H.D., a national of Somalia, born in 1989. She claims that her deportation to Somalia would violate her rights under articles 2, 12 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 22 December 2000, respectively. The author is represented by counsel, Niels-Erik Hansen.

1.2 The author's asylum claim was rejected by Denmark on 27 October 2014, and she was ordered to leave the country. At her request, the Committee requested that the State party refrain from returning the author to Somalia, pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure. On 7 November 2014, the Refugee Appeals Board of Denmark suspended the author's deportation until further notice.

Facts as submitted by the author

2.1 The author belongs to the Ashraf clan and is a Muslim from southern Somalia. She was married in 2007. She claims that, in 2010, her husband disappeared.[1]

2.2 In 2013, the author began a relationship with another man, A. Subsequently, her brother-in-law came to her house and asked her about her relationship with A.; he hit her in the face. She initially denied having any relationship with A., but then admitted to it.

2.3 The author did not alert Al-Shabaab of the relationship because she would have been stoned to death if the group had discovered that she had entered into an extramarital relationship. On 10 February 2014, the author's brother-in-law came to her house again and found her with A. He stabbed A. with a knife. The author feared that she, too, would be attacked by her brother-in-law, so she locked herself in a room with one of her two children from her marriage (the other child was outside playing). The brother-in-law left soon thereafter. Later that day, neighbours came into the author's home and knocked on the door of the room. Subsequently, the author was accused of the murder of A.

2.4 On 20 February 2014, the author was sentenced to death by a local sharia court for the murder of A. and was to be executed 15 days later. According to the author, no one believed her claims that her brother-in-law was responsible for the murder. The author claims that her allegations were not taken into account because she was a woman.

2.5 In prison, she was assaulted by guards, in particular she was hit with the butt of a rifle. On 23 February 2014, the town was attacked by government forces. During the fighting, the prison was broken into, and the author escaped with the help of relatives of other inmates.[2] Since 22 March 2014, government forces have controlled the area. With help from a woman in town, the author was driven by truck to Ethiopia.[3] She had no passport. She stayed in Addis Ababa for two months. Her grandfather arranged a flight to Denmark, with the support of an agent who provided her with someone else's passport.

2.6 The author arrived in Denmark on 16 May 2014 and sought asylum there. In her application, she insisted that, irrespective of who controlled the area in which she lived, she would not be protected from her husband's family or A.'s family. Her application was rejected by the Immigration Service of Denmark on 5 August 2014.

[1] No further information provided.

[2] No further information provided.

[3] The author does not provide further information on how she managed to flee in the truck.

2.7 On 27 October 2014, the Refugee Appeals Board confirmed that decision.

2.8 The author contends that she has exhausted all domestic remedies, given that decisions of the Refugee Appeals Board are final.

Complaint

3.1 The author submits that her asylum application should be assessed with regard to violations of her rights under the Convention, given that she has provided evidence of gender-based violence. She claims that the State party has not complied with its obligations under article 2 of the Convention and that the decision of the Refugee Appeals Board violates the principle of non-refoulement and is not in line with the Committee's general recommendation No. 19 (1992) on violence against women. By deporting her, Denmark would also violate articles 12 and 15 of the Convention.

3.2 The author fears that she will be killed by Al-Shabaab if deported to Somalia because she was sentenced to death there. She also fears the family of A., who believe that she killed him, and the family of her husband, owing to their reaction when learning of her extramarital relationship.

3.3 The author also claims that the authorities have neither the ability nor the willingness to provide her, as a woman, with protection from her husband's family and A.'s family. In addition, she cannot take up residence elsewhere in Somalia; given that she is a single woman, without the protection of the authorities or of her clan, she will be at risk of abuse.

3.4 The author further claims that she has been subjected to gender-based violence perpetrated by her husband's brother. The fact that her brother-in-law could beat her with complete impunity is illustrative of the oppression inflicted on women in Somalia. Women are considered to be men's property and, in the husband's absence, his family assumes those rights over his spouse.

State party's observations on admissibility and the merits

4.1 The State party set out its observations on the admissibility and the merits of the communication, in a note verbale dated 5 May 2015. It challenges the admissibility of the communication. With regard to the merits, the State party affirms that the provisions of the Convention would not be violated by the author's deportation to Somalia.

4.2 The State party recalls that the author, a Somali national born in 1989, entered Denmark on 16 May 2014 and applied for asylum. On 5 August 2014, the Immigration Service rejected her application. On 27 October 2014, on appeal, the Refugee Appeals Board confirmed that decision.

4.3 In its decision, the Refugee Appeals Board noted, inter alia, that the author had claimed that she had not been a member of any political or religious association or organization, nor had she been politically active. In her asylum application, the author claimed that she feared being deported to Somalia because she could be killed by Al-Shabaab, given that the group had sentenced her to death. She also feared the family of her deceased friend A., because they suspected her of having killed him. In support of her claims, she affirmed that she had been married since 2007, but that her husband had disappeared in 2010; the last time that she had heard from him was in a conversation by telephone, during which he informed her that he was being pursued by Al-Shabaab. She began a relationship with A. in 2013. Her brother-in-law became aware of it and told her to end the relationship, but she continued it. On 10 February 2014, her brother-in-law intruded into her home and stabbed A. with a knife. A. died as a result. That same day, members of Al-Shabaab accused the author of the murder. On 20 February 2014, she was sentenced to death as an unfaithful spouse and a

murderer by a sharia court. A few days later, the author managed to escape from prison.

4.4 The Refugee Appeals Board noted that it could not accept the facts as indicated by the author. It submitted that the author could not have maintained a relationship with A., to the extent that her children called the man "uncle", without experiencing any problems, in particular from her husband's family. The Board attached decisive importance to the fact that the author had made inconsistent statements on crucial elements of her grounds for asylum. For example, in her asylum claim, she stated that her brother-in-law, after killing A., refrained from using violence against her, because she had cried out. At the Board hearing, however, she stated that she had avoided violence by locking herself in an adjacent room. Also at the hearing, she made an elaborate statement on the violence that her brother-in-law had previously subjected her to and presented photographs thereof. When asked why she was only then, at the Board hearing, providing that information, she explained that it was because she had feared Al-Shabaab. The Board found the explanation illogical, especially taking into account that the author had already made statements incriminating Al-Shabaab and that her brother-in-law was not a member of Al-Shabaab. The Board also noted that, in general, the author had been reluctant to provide specific details on the layout of the prison, as well as on the exact way in which A. had died. The Board noted that, in all aspects, the author had made evasive and "sketchy" replies. On the basis of an overall assessment, therefore, the Board found that the author had failed to substantiate the grounds on which she had based her request for asylum, including that she would face probable persecution if deported to Somalia, and that her statements, including the statement on abuse, were not credible.

4.5 The Refugee Appeals Board was of the view that the fact that women living in Somalia faced difficult general conditions was not sufficient for establishing that the author was at risk of torture in the country. The State party submitted that the Board normally did not order an examination for signs of torture in cases in which the asylum seeker had lacked credibility throughout the proceedings. In such circumstances, the Board rejected the asylum seeker's statement about torture in its entirety. The author's statement on torture presented significant inconsistencies. On the basis of the foregoing, the majority of the Board members found no reason to order an examination for signs of torture. In fine, the Board found that the author would not be at risk of persecution falling within section 7 (1) of the Aliens Act,[4] or risk inhumane treatment under section 7 (2) thereof, and therefore upheld the decision of the Immigration Service. The State party supports the Board's assessment finding that it was not necessary to initiate an examination of the author for signs of torture.

4.6 The State party provided extensive information on the independence, membership, functioning and prerogatives of the Refugee Appeals Board and the legal basis of its decisions. The Board is a collegial, independent, quasi-judicial body. Its decisions are taken in accordance with the international obligations of Denmark, in particular the Convention relating to the Status of Refugees of 1951. The fact that the Board did not make express reference to articles of the Convention on the Elimination of All Forms of Discrimination against Women does not mean that it had failed to take into consideration the obligations of Denmark under the Convention. The State party submits that the Board always takes those obligations into consideration when assessing asylum cases. In addition, the Board is responsible not only for examining and eliciting information on the specific facts of a case, but also for providing the necessary background information, including information on the situation in the asylum seeker's country of origin or country of first asylum.

[4] Section 7 (1) of the Aliens Act incorporates article 1 of the Convention relating to the Status of Refugees into national law.

Background information is collected from various sources, including the Internet, the Office of the United Nations High Commissioner for Refugees, reports from non-governmental organizations and the competent authorities of Denmark.

4.7 The State party insists that the author is requesting an extraterritorial application of the Convention. Invoking the Committee's jurisprudence,[5] the State party considers that the author has failed to establish that she will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence if deported to Somalia. The State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of her communication. Accordingly, it concludes that her communication should be declared inadmissible, given that the claims therein are manifestly unfounded.

4.8 The State party submits that the author merely alleged that she would be at risk of serious forms of gender-based violence if she were returned to Somalia, but that she failed to explain the extent to which that would infringe articles 12 and 15 of the Convention. Those articles are not relevant in the present case, because there is no issue of access to medical or health care and the author has not been treated unfavourably because she is a woman.

4.9 According to the State party, the author is attempting to use the Committee as an appellate body in order to have the factual circumstances evaluated in support of her claim, which would equate to a reassessment of her asylum application by the Committee. The author merely expressed her disagreement with decisions made by the national courts and failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board had failed to take properly into account in determining the applicability of the principle of non-refoulement to her case. The State party argues that the Committee should give considerable weight to the facts established by the Board, which is better placed to assess the factual circumstances of the author's case.

Author's comments on the State party's observations on admissibility and merits

5.1 On 1 March 2016, the author submitted her comments on the State party's observations. She reports that she fears deportation because four Somali nationals were recently deported by the authorities of Denmark. She claims that, in the light of a recent case of a Somali asylum seeker in Sweden,[6] the Refugee Appeals Board of Denmark reopened several similar cases concerning single Somali women, and that the cases included the author of communication No. 93/2015.[7] The author expresses surprise that her case has not been reopened, given that she is in a similar situation as that of the author of communication No. 93/2015.

5.2 The author also claims that Denmark does not comply with the decisions of the various United Nations human rights treaty bodies. She mentions as an example a communication relating to deportation before the Human Rights Committee.[8] According to her, the Refugee Appeals Board denied that it was legally bound by that decision[9] on the grounds that the provisions of the International Covenant on Civil

[5] See *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011).

[6] The author refers to the judgment of 10 September 2015 of the European Court of Human Rights in *R.H. v. Sweden* (application No. 4601/14).

[7] Communication No. 93/2015, *K.I.A v. Denmark*, discontinued on 6 November 2017.

[8] See *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013).

[9] The author provided the Committee with the decision of the Refugee Appeals Board of 17 November 2015.

and Political Rights had never been incorporated into the legislation of Denmark; similarly, the legislation had not been brought into line with the Convention.

5.3 On the issue of whether, during the asylum proceedings, the author should have been given a medical examination for signs of torture, she notes that the decision of the Refugee Appeals Board rejecting her claim was not unanimous. A minority of one or two members found reason to conduct such an examination.[10]

5.4 The author claims that the mere fact that Somalia has not signed the Convention is justification for her fear of what will befall her if she is deported. She recalls that, in its decision, the Refugee Appeals Board did not mention the Convention, although her counsel had raised the issue before the Board. According to the author, that indicates a lack of interest on the part of the authorities of Denmark in respecting their international obligations. The author argues that, in the event of a conflict regarding interpretation of the facts, it is the primary responsibility of the State party to prove that decisions of the national courts have referred to the Convention.

5.5 In order to underline the difficult situation of single women in Somalia, the author cites a recent decision of the European Court of Human Rights.[11] She also claims that the State party cannot submit that she has failed to prove the allegations of torture because, when she asked for an examination, her request was rejected by the Board.

State party's additional observations

6.1 By note verbale of 18 October 2016, the State party informed the Committee that, in the light of the judgment of the European Court of Human Rights in *R.H. v. Sweden*, the immigration authorities of Denmark decided to reopen the author's case and order an oral hearing before a new panel for clarification of the author's family and other support networks in her country of origin. On 15 July 2016, the Refugee Appeals Board once again upheld the decision of the Immigration Service. Taking into account the oral observations of the author, the Board considered that she had failed to explain how she would be at risk if returned to Somalia. In that respect, the Board insisted that the statements of the author throughout the process seemed to be fabricated for the occasion. In addition, the Board found that the author had failed to substantiate that she would find herself in the position of a single woman, with no "male social network", if deported to her country of origin. The Board concluded, therefore, that the author should be presumed to have access to support from both family and other social networks, including a "male social network", for her protection.

6.2 In its decision of 15 July 2016, the Refugee Appeals Board again refused to initiate an examination of the author for signs of torture, and it confirmed the decision of the Immigration Service.

6.3 The State party has submitted additional general information about the situation in Somalia. On the basis of a report of the Home Office of the United Kingdom of Great Britain and Northern Ireland of 2016,[12] the State party affirms that Al-Shabaab no longer controls major cities in the region of Shabelle Hoose.

6.4 The State party reiterates that the communication should be declared inadmissible, given that the claims therein are manifestly unfounded. Should the Committee find it admissible, the State party maintains the view that sufficient

[10] The author did not provide the Committee with the source of that information.

[11] See footnote 6 above.

[12] Home Office of the United Kingdom, "Country information and guidance: Somalia — security and humanitarian situation in south and central Somalia" (July 2016).

grounds have not been established to support the claim that the deportation of the author to Somalia would constitute a violation of the Convention.

Issues and proceedings before the Committee concerning admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

7.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the author claims to have exhausted domestic remedies and that the State party has not challenged the admissibility of the communication on those grounds. The Committee observes that the Refugee Appeals Board functions in practice as a court of appeal, in view of its nature as an independent, competent and quasi-judicial body, and, therefore, that no appeals against its decisions can be lodged. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the matter.

7.4 The Committee takes note of the State party's view that the claims in the communication are manifestly unfounded and contrary to article 4 (2) (c) of the Optional Protocol owing to the lack of substantiation thereof. The Committee regrets the insufficient quality of the submissions and the repetition of the same allegations, with no further elaboration or information provided to better substantiate the claims made by the author, despite the fact that she is represented by an attorney at law. In that regard, the Committee recalls the author's claim that she fears that she will be at risk of violence from the family of her husband, the family of A., and Al-Shabaab if she is deported to Somalia because, three years after her husband disappeared, she began a relationship with A., now deceased, although she was still married. The author claims that, if the State party deports her to Somalia, she will be personally exposed to serious forms of gender-based violence, in violation of her rights under articles 2, 12 and 15 of the Convention.

7.5 The Committee refers to paragraph 21 of its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which it noted that, under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The Committee further refers to paragraph 7 of its general recommendation No. 19, in which it noted that gender-based violence, which impaired or nullified the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subject to torture. In its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee further developed its interpretation of violence against women as a form of gender-based discrimination. In paragraph 21 of the general recommendation, it reaffirmed the obligation of States parties to eliminate discrimination against women, including gender-based violence against women, and recalled that the obligation comprised two aspects of State responsibility for such violence, that which resulted from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other.

7.6 The author claims that, if deported to Somalia, she would be exposed to a risk of serious forms of gender-based violence at the hands of members of the family of her husband, the family of A., and Al-Shabaab.

7.7 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In that regard, the Committee notes that, in substance, the author is challenging the manner in which the State party's asylum authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached their conclusions. The issues before the Committee are, therefore, whether there was any irregularity in the decision-making process regarding the author's asylum application and whether the State party's authorities failed to properly assess the risk of serious gender-based violence in the event of her return to Somalia.

7.8 The Committee notes that the State party's authorities found that the author's account lacked credibility, owing to a number of factual inconsistencies and a lack of substantiation, and appeared fabricated. The Committee observes that the insufficient information provided by the author's counsel to the Committee corroborates the determination of the State party's authorities that the author's claims lack substantiation. The Committee also notes that the State party took into consideration the general situation in Somalia.

7.9 The Committee further notes the author's claims that the immigration authorities of Denmark have failed to consider her case from the perspective of the Convention or to mention the Convention in their decision, even though the matter was raised by her counsel during the Refugee Appeals Board hearing. The Committee observes that the author's counsel requested the immigration authorities to consider her asylum claim in the light of the Convention, without however referring to specific provisions and without substantiating the claims in relation to any specific articles.

7.10 The Committee notes the author's claim that she was sentenced to death unlawfully for the murder of A. in her home town in Somalia, a sentence pronounced under sharia law, when the region was administrated by Al-Shabaab. The Committee notes that, according to the material on file, Al-Shabaab control of the region ceased in 2014. It also notes that the author does not claim that the death sentence in question currently remains in effect, now that the region is administrated by government authorities. Accordingly, the Committee cannot conclude that the author would risk imprisonment and/or the carrying out of the death sentence pronounced when Al-Shabaab administrated the region. That aspect of the communication is therefore inadmissible under article 4 (2) (c) of the Optional Protocol.

7.11 In addition, the author has not provided sufficient information to establish that she would be unable to live together with relatives from her own family or that she would be left with no network in Somalia. In that connection, the Committee notes that, even once granted an appeal before the Refugee Appeals Board, the author did not substantiate her claim that she has no family network or ties to count on, including a male network (see para. 6.1 above). The Committee also notes that the author has not claimed that she has no relatives in Somalia, but rather that she has had no contact with them since her arrival in Denmark. According to the information on file, she has close family members living in her town of origin, and it was indeed her family members who organized and paid for her travel to Denmark.

7.12 The Committee notes the author's claim that she suffered violence while imprisoned by Al-Shabaab and that the authorities of Denmark did not order an examination for signs of torture in her case, despite her request and the fact that she

had provided them with pictures of scars on her back, which were allegedly the result of the ill-treatment in question. The Committee further notes that the author submitted that claim and the pictures in question only at the stage of appeal to the Refugee Appeals Board, the Board considered her explanations in justification of the delay to be unsatisfactory and illogical, and the Board's overall assessment of the author's allegations was that they were insufficiently substantiated. The Committee also notes the State party's argument that Al-Shabaab no longer controls the region in question. In addition, the Committee considers that there is no information before it that would permit it to conclude that the Board refused to order an examination for signs of torture for the author because she is a woman.

7.13 In the light of the foregoing, and while not underestimating the legitimate concerns with regard to the general human rights situation in Somalia, in particular for women, the Committee considers that no information on file permits it to conclude that the State party's authorities failed to give sufficient consideration to the author's application for asylum, or that the examination of her asylum case otherwise suffered from any procedural defect. In view of the considerations above, the Committee considers that the author has failed to establish that, if deported to Somalia, she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.

8. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author.